IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

MFA.No. 483 of 2001(B)

OPMV.1328/1987 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/3RD RESPONDENT:

NATIONAL INSURANCE COMPANY LTD. REP.
BY THE DY. MANAGER, MTPC, REGIONAL
OFFICE ANNEXE, KOCHI.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS/PETITIONERS 1 TO 6 & RESPONDENTS 1 & 2:

1. JAMEELA, W/O LATE ALIYAR, KUNDAUVELILVEEDU,
   SOUTH VAZHAKKALA, KAKKANAD WEST POST.

2. SULAIKA, D/O LATE ALIYAR, DO. DO.

3. SOUDA, DO. DO. DO.

4. FOUSY, DO. DO. DO.

5. MYMOONA, DO. DO. (MINOR REP. BY R1 MOTHER JAMEELA)

6. KAYYAKUTTY, W/O LATE ABOOBACKER, DO. DO.

7. BABU T. POULOSE, S/O YOHANNAN PAULOSE,
   THAVAMATTATHIL HOUSE, MULAKKULAM SOUTH
   POST, VIA PIRAVOM.

8. PRAKASH, S/O KRISHNAN, KUBALATHIL VEEDU,
   MULAKULAM (VIA), PIRAVOM.

BY ADV. SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SRI.CAESAR V. PILLA
SRI.O.V.ABRAHAM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 483 of 2001

JUDGMENT

Koshy, J.

This appeal is filed by the Insurance Company against the award of the Motor Accidents Claims Tribunal, Ernakulam. The only dispute is regarding the limits of the liability of the Insurance Company. Six dependents of a deceased motor accident victim filed an application for compensation, claiming Rs.3,50,000/-. The Tribunal awarded a total compensation of Rs.1,90,000/- with interest. It was also found that the liability of the Insurance Company was limited to Rs.50,000/- and the balance amount has to be realised from respondents 1 and 2, the owner and driver of the vehicle. The owner of the vehicle filed an appeal and this Court remanded the matter to consider the policy.

2. On going through the policy, it is seen that it is a comprehensive policy. The total amount paid under the policy is Rs.6,396/-, out of which, an amount of Rs.3,905/- is for own damage less discount; for the third party use the contribution made was Rs.240/-; for unlimited liability per passenger the contribution made is Rs.2,550/-, considering the tariff, etc. the unlimited liability is Rs.50/- per passenger and the carrying capacity is 51+2. Rs.16/- is paid for workmen compensation liability of the driver and cleaner. The liability per passenger and the liability for passenger of any one accident are also unlimited. But, for the third party liability, only for covering the statutory amount, Rs.240/- was paid and no additional payment was made to increase the third party liability. We are bound by the terms of the policy. The policy is very clear that the liability to public risk was not unlimited, but it was restricted to a statutory

limit and the accident occurred prior to the introduction of the new Act, i.e. on 6.11.1987. Therefore, the liability of the Insurance Company is only Rs.50,000/-.

3. In the schedule of premium, what is written is limit per passenger and the limit per one accident are both unlimited and then workmen compensation at Rs.16/-. With regard to the column in carbon copy of the original policy, it shows that against additional premium of third party liability no amount is paid. Therefore, we agree with the contention of the Insurance Company that it is liable to pay only Rs.50,000/- with interest and the balance amount has to be recovered from the owner and driver. It is submitted that the Insurance Company has deposited the above amount with interest. The deceased left with 28 year old widow, four minor children and an old mother. Considering the facts of this case and plight of the dependents and being a third party claim, we

direct the Insurance Company to deposit the entire amount. We also make it clear that the Insurance Company is entitled to recover the excess amount over and above Rs.50,000/- with interest from the owner and driver in execution of the same award itself.

This appeal is allowed to the above extent.

(J.B.Koshy, Judge)

25th May, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.483 of 2001

JUDGMENT

25th May, 2007